

The opinion in support of the decision being entered today was **not** written
for publication and is **not** binding precedent of the Board.

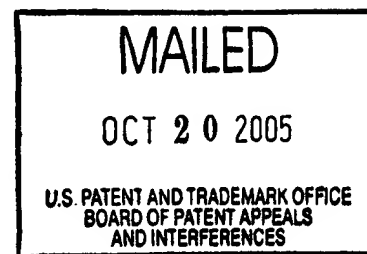
UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte Shawn D. Loveland

Appeal No. 2005-2661
Application No. 09/502,515

ON BRIEF



Before DIXON, GROSS, and MACDONALD, **Administrative Patent Judges**.
DIXON, **Administrative Patent Judge**.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-9, 11-15, 17-21, which are all of the claims pending in this application.

We AFFIRM-IN-PART.

BACKGROUND

Appellant's invention relates to voice print access to computer resources . An understanding of the invention can be derived from a reading of exemplary claims 1 and 14, which are reproduced below.

1. A method for authenticating a user for access to a computer network via a network access server including a dual-access communications interface supporting both data calls and voice calls over a same physical input, the method comprising the steps of:

receiving, via the dual-access communications interface, a user identification from a user seeking access to the computer network via the dual-access communications interface;

issuing a variable challenge query;

receiving, via the dual-access communications interface, a voice response to the challenge query; and

selectively logging the user onto the computer network based upon a determination of whether the voice response to the challenge meets a matching standard with reference to a stored voice sample sequence, wherein the voice sample sequence corresponds to the user identification and the challenge query.

14. A system for authenticating a user for access to a computer network, the system comprising:

a user authentication database including for each registered user;

an identification, and

a set of vocal samples corresponding to the identification;

a network access server, including a dual-access communications interface supporting both data calls and voice calls over a same physical

input, for receiving a user identification from a user seeking authentication via the dual-access communications interface, issuing a variable challenge query, comparing a received response to the challenge query to a stored voice sample sequence corresponding to the user identification and the challenge query, and issuing a logon request, including a user identification and password, on behalf of an authenticated user determined by the comparison of the received response to the stored voice sample sequence;

a logon server coupled to the network access server and configured to receive the user identification and password from the network access server and in response providing a set of corresponding credentials for use by an application proxy.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Engelke et al. (Engelke)	5,604,786	Feb. 18, 1997
Kanevsky et al. (Kanevsky)	6,161,090	Dec. 12, 2000

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellant regarding the above-noted rejections, we make reference to the answer (mailed Aug. 9, 2004) for the examiner's reasoning in support of the rejections, and to the brief (filed May 20, 2004) for appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the

respective positions articulated by appellant and the examiner. As a consequence of our review, we make the determinations which follow.

Only those arguments actually made by appellant have been considered in this decision. Arguments that appellant could have made but chose not to make in the brief have not been considered. We deem such arguments to be waived by appellant [see 37 CFR § 41.37(c)(1)(vii) effective September 13, 2004 replacing 37 CFR § 1.192(a)].

35 U.S.C. § 103

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness. **See In re Rijckaert**, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A *prima facie* case of obviousness is established by presenting evidence that the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the references before him to make the proposed combination or other modification. **See In re Lintner**, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972). Furthermore, the conclusion that the claimed subject matter is *prima facie* obvious must be supported by evidence, as shown by some objective teaching in the prior art or by knowledge generally available to one of ordinary skill in the art that would have led that individual to combine the

relevant teachings of the references to arrive at the claimed invention. **See In re Fine**, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Rejections based on § 103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. **See In re Warner**, 379 F.2d 1011, 1017, 154 USPQ 173, 177-78 (CCPA 1967), **cert. denied**, 389 U.S. 1057 (1968). Our reviewing court has repeatedly cautioned against employing hindsight by using the appellant's disclosure as a blueprint to reconstruct the claimed invention from the isolated teachings of the prior art. **See, e.g., Grain Processing Corp. v. American Maize-Prods. Co.**, 840 F.2d 902, 907, 5 USPQ2d 1788, 1792 (Fed. Cir. 1988).

When determining obviousness, “the [E]xaminer can satisfy the burden of showing obviousness of the combination ‘only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.’” **In re Lee**, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002), citing **In re Fritch**, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992). “Broad conclusory statements regarding the teaching of multiple references, standing alone, are not

‘evidence.’” **In re Dembiczak**, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). “Mere denials and conclusory statements, however, are not sufficient to establish a genuine issue of material fact.” **Dembiczak**, 175 F.3d at 999-1000, 50 USPQ2d at 1617, citing **McElmurry v. Arkansas Power & Light Co.**, 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993).

Further, as pointed out by our reviewing court, we must first determine the scope of the claim. “[T]he name of the game is the claim.” **In re Hiniker Co.**, 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998). Therefore, we look to the limitations of independent claim 1. Here, we note that independent claim 1 only recites a single level of authentication to the computer system, whereas independent claim 14 recites an initial authentication and the system then issues a logon request with associated identification and password.

Appellant argues that the combination of Kanevsky and Engelke does not teach the final element of the independent claims of Group 1, that is, of claims 1 and 21 : “selectively logging the user onto the computer network” (Brief at page 9.) Appellant argues that while Kanevsky authenticates a user, neither Kanevsky nor Engelke teaches using that authentication as a basis for logging the user onto a computer network. (Brief at page 9.) While we agree with appellant, we do not find that claim 1 requires a second authentication. We find that the single authentication taught

by Kanevsky meets the recited limitation and that Kanevsky further teaches accessing a computer system at column 9. Appellant argues that the Final Office Action cited Kanevsky, column 3, lines 25-50, for this element, but Kanevsky there discusses only “permitting access to a service or facility” rather than the claimed “logging onto the computer network.” (Brief at page 9.) We agree with appellant that the cited portion of Kanevsky only teaches access to a service or facility, but the above cited portions of Kanevsky at column 9 specifically discuss access to a computer and furthermore discuss the use of a password to initially narrow the set of possible candidates in a database at column 10. Therefore, we find that appellant has not adequately rebutted the *prima facie* case of obviousness, nor has appellant shown error therein.

Therefore, we will sustain the rejection of independent claim 1 which is the representative claim for Group 1. (Brief at page 7.) Therefore, we also sustain the rejection of claims 2-9, 11-13, and 21 which appellant elected to group therewith.

With respect to independent claim 14, appellant argues that the examiner “was very cursory and merely analogized these claims to those of Group 1 without performing any further analysis.” (Brief at page 10.) We agree with appellant and do not find that the examiner has established a *prima facie* case of obviousness in the statement of the rejection. Furthermore, from our review of the teachings of Kanevsky, we do not find a teaching or suggestion of the two levels of authentication. Specifically, we find no teaching or suggestion of the claimed “comparing a received response to

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the challenge query to a stored voice sample sequence corresponding to the user identification and the challenge query, and issuing a logon request, including a user identification and password, on behalf of an authenticated user determined by the comparison of the received response to the stored voice sample sequence” nor has the examiner identified any teaching or suggestion thereof. Since the examiner did not establish an initial *prima facie* case of obviousness, we cannot sustain the rejection of independent claim 14 thereon, and we will similarly not sustain the rejection of dependent claims 15 and 17-20.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1-9, 11-13, and 21 under 35 U.S.C. § 103 is affirmed, and the decision of the examiner to reject claims 14, 15, and 17-20 under 35 U.S.C. § 103 is reversed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

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JOSEPH L. DIXON

JOSEPH L. DIXON
Administrative Patent Judge

Anita Pellman Gross

ANITA PELLMAN GROSS
Administrative Patent Judge

W. A. Macdonald
W. A. MACDONALD

ALLEN R. MACDONALD
Administrative Patent Judge

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